

IN THE MATTER OF	:	BEFORE THE
CHARLES A. SHARP	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-002C

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DECISION AND ORDER

On April 3, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Charles A. Sharp, Petitioner, for a conditional use for a farm tenant house in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Sections 131.N.20 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Charles A. Sharp testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The subject property, known as 13900 and 13950 Monticello Drive, is located in the 3rd Election District at the eastern terminus of Monticello Drive, about one mile east of Maryland Route 97, in Cooksville (the "Property"). The Property is referenced on Tax Map 9, Grid 19, as Parcel 327.
2. The Property is an irregular L-shaped parcel and consists of about 30.23 acres. The bulk of the southern portion of the Property is cropland and a wooded wetlands and pond area. The

northern area of the Property is generally wooded.

The Property is improved in the southwestern portion of the lot with two dwellings: (1) a two-story single-family detached dwelling located about 400 feet to the southeast of the entrance to the Property from Monticello Drive, and (2) a one-story single-family detached dwelling located about 230 feet east of the entrance. To the north of this second house are several accessory buildings of various sizes.

3. Vicinal properties are zoned RC-DEO and include:

(a) To the north and east of the Property is Parcel 98, a large farm property with an agricultural land preservation easement.

(b) To the south is the wide right-of-way for Interstate Route 70.

(c) To the west are Open Space Lot 28 on the south side of Monticello Drive and Preservation Parcel C on the north side. Further west are the single-family detached residential lots of the Harless Manor subdivision.

4. The Petitioner proposes to use the existing one-story single-family dwelling as a farm tenant house.

5. The Property is served by private water and septic facilities. The 2000 General Plan designates the Property as a "Rural Conservation" area. Monticello Drive is a local road with 22 feet of paving within an existing 50-foot wide right-of-way. The posted speed limit is 30 mph.

6. The Petitioner testified that there will be only one occupant of the tenant house who will be involved in a bona fide farming operation on the Property.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan: The Howard County General Plan designates the area in which the Property is located as “Rural Conservation.” The proposed use is typical of many farm operations located in rural zones. The small farm tenant house will be of low intensity and small in relation to the 30-acre Property. The Property is located at the end of a private road used by residential properties. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Site will have adverse effects on vicinal properties above and beyond those ordinarily associated with such use. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed farm tenant house has adverse effects in the RC zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the RC district.

The Petitioner has met his burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily

associated with a farm tenant house in the RC district:

1. Physical Conditions. The proposal consists of the conversion of a one-story dwelling into a farm tenant house. A tenant who will be involved in a bona fide farming operation on the Property will occupy the house. The proposed use will be a typical low-intensity residential use. No new lighting is proposed. Consequently, the use will not generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a farm tenant house in an RC zoning district, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. The proposed use will involve the existing one-story dwelling. The house is located 230 feet from the east lot line and well buffered by distance and landscaping from vicinal properties. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. There is sufficient room near the proposed tenant house to park the tenant's personal vehicle. The existing on-site driveway will provide access to the tenant house. No loading or refuse areas are proposed. Consequently, the parking areas will be of adequate size and the driveways will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The existing drive provides safe access and has adequate sight distance. No acceleration or deceleration lanes are necessary. Consequently, the proposed driveway provides

adequate and safe ingress and egress to the Property as required by Section 131.B.2.d.

II. Specific Criteria for Farm Tenant House (Section 131.N.20).

1. The proposed farm tenant house will be occupied by a person involved in a bona fide farming operation of the Petitioner, in accordance with Section 131.N.20.a.

2. The 30.23-acre Property is greater than 25 acres and less than 50 acres, as required by Section 131.N.20.b.

ORDER

Based upon the foregoing, it is this **17th day of May 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Charles A. Sharp for a conditional use for a farm tenant house in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **GRANTED**;

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.